

## Defendants.

**2:19-cv-01381-SGC**

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5. To the extent this paragraph contains any allegations or averments of wrongdoing by SN, it denies those allegations and/or averments and demands strict proof of them.

6. To the extent this paragraph contains any allegations or averments of wrongdoing by SN, it denies those allegations and/or averments and demands strict proof of them.

7. SN admits that it lawfully conducts business in the Northern District of Alabama. As written, SN denies the remaining allegations and/or averments in this paragraph.

8. To the extent this paragraph contains any allegations or averments of wrongdoing by SN, it denies those allegations and/or averments and demands strict proof of them.

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217. Denied.

- 218. Denied.
- 219. Denied.
- 220. Denied.
- 221. (and each of its subparts) Denied.
- 222. Denied.
- 223. Denied.
- 224. Denied.
- 225. Denied.
- 226. Denied.
- 227. (and each of its subparts) Denied.
- 228. Denied.
- 229. Denied.
- 230. Denied.
- 231. Denied.
- 232. Denied.
- 233. Denied.
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314. Denied.

315. Denied.

316. Denied.

317. Denied.

318. Denied.

319. Denied.

320. Denied.

321. Denied.

322. Denied.

323. To the extent this paragraph contains any allegations or averments of wrongdoing by SN, it denies those allegations and/or averments and demands strict proof of them.



324. Denied.

325. Denied.

326. Denied.

327. Denied.

328. Denied.

329. Denied.

330. Denied.

331. Denied.

332. Denied.

333. Denied.

334. Denied.

335. Denied.

336. Denied.

337. Denied.

338. Denied.

339. Denied.

340. Denied.

341. Denied.

342. Denied.

343. Denied.

344. To the extent this paragraph contains any allegations or averments of wrongdoing by SN, it denies those allegations and/or averments and demands strict proof of them.

345. Denied.

346. Denied.

347. Denied.

348. Denied.

349. Denied.

350. Denied.

351. Denied.

352. Denied.

353. Denied.

354. To the extent this paragraph contains any allegations or averments of wrongdoing by SN, it denies those allegations and/or averments and demands strict proof of them.

355. To the extent this paragraph contains any allegations or averments of wrongdoing by SN, it denies those allegations and/or averments and demands strict proof of them.

356. Denied.

357. Denied.

358. Denied.

359. Denied.

360. Denied.

361. Denied.

362. Denied.

363. Denied.

364. Denied.

365. Denied.

366. Denied.

367. Denied.

As for the unnumbered paragraph immediately following paragraph 367 under the heading “**RELIEF REQUESTED**”, and each of its subparts, SN denies that Plaintiff is entitled to any damages, relief, or recovery whatsoever from SN.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

The correspondence Plaintiff relies upon for its claims does not qualify as a Notice of Error or Request for Information within the purview of the Real Estate Settlement Procedures Act (RESPA).

#### **SECOND AFFIRMATIVE DEFENSE**

SN denies that the loan at issue is subject to the Fair Debt Collections Practices Act (FDCPA).

**THIRD AFFIRMATIVE DEFENSE**

SN denies that, with regard to the loan at issue, it qualifies as a debt collector within the purview of the FDCPA.

**FOURTH AFFIRMATIVE DEFENSE**

SN pleads lack of notice.

**FIFTH AFFIRMATIVE DEFENSE**

SN pleads bona fide error.

**SIXTH AFFIRMATIVE DEFENSE**

SN pleads the maintenance of reasonable policies and procedures.

**SEVENTH AFFIRMATIVE DEFENSE**

SN pleads truth.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's damages, if any, were caused by third parties for which or whom SN is not legally responsible.

**NINTH AFFIRMATIVE DEFENSE**

SN pleads superseding, intervening causation.

**TENTH AFFIRMATIVE DEFENSE**

SN pleads lack of causation.

**ELEVENTH AFFIRMATIVE DEFENSE**

SN pleads failure to mitigate.

**TWELFTH AFFIRMATIVE DEFENSE**

SN pleads lack of actual damage.

**THIRTEENTH AFFIRMATIVE DEFENSE**

SN denies that it and Plaintiff are parties to a contract.

**FOURTEENTH AFFIRMATIVE DEFENSE**

SN pleads that its conduct has been in accordance with the contracts at issue.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by his own breaches of the relevant contract(s).

**SIXTEENTH AFFIRMATIVE DEFENSE**

SN pleads contributory negligence, assumption of the risk, and last clear chance.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

SN pleads lack of duty.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

SN pleads lack of intent.

**NINETEENTH AFFIRMATIVE DEFENSE**

SN's communications with Plaintiff were respectful, appropriate, and consistent with industry standards.

**TWENTIETH AFFIRMATIVE DEFENSE**

Defendant denies that it is guilty of any conduct which entitles Plaintiffs to recover punitive damages.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint, and each and every Count thereof, to the extent that it seeks exemplary or punitive damages, violates SN's right to procedural due process under the Fourteenth Amendment of the United States Constitution and under the Constitution of the State of Alabama, and therefore fails to state a cause of action under which either punitive or exemplary damages can be awarded.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiff's Complaint, and each count thereof, to the extent that it seeks punitive or exemplary damages, violates SN's rights to protection from "excess fines" as provided in the Eighth Amendment of the United States Constitution and Article I, Section 15 of the Constitution of the State of Alabama, and violates SN's right to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and as provided in the Constitution of the State of Alabama, and therefore fails to state a cause of action supporting the punitive or exemplary damages claimed.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

Any award of punitive damages to the Plaintiff in this case will be violative of the constitutional safeguards provided to SN under the Constitution of the United States of America.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

Any award of punitive damages to the Plaintiff in this case will be violative of the constitutional safeguards provided to SN under the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States in that punitive damages are vague and are not rationally related to legitimate government interests.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Any award of punitive damages to the Plaintiff in this case will be violative of Article I, Section 6 of the Constitution of the State of Alabama which provides that no person shall be deprived of life, liberty, or property except by due process of law, in that punitive damages are vague and are not rationally related to legitimate government interests.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

Any award of punitive damages to the Plaintiff in this case will be violative of the procedural safeguards provided to SN under the Sixth Amendment to the Constitution of the United States in that punitive damages are penal in nature and consequently SN is entitled to the same procedural safeguards accorded to criminal defendants.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

It is violative of the self-incrimination clause of the Fifth Amendment to the Constitution of the United States of America to impose against SN punitive

damages, which are penal in nature, yet compel SN to disclose potentially incriminating documents and evidence.

#### **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

It is violative of the self-incrimination clause of Article I, Section 6 of the Constitution of the State of Alabama to impose against SN punitive damages, which are penal in nature, yet compel SN to disclose potentially incriminating documents and evidence.

#### **TWENTY-NINTH AFFIRMATIVE DEFENSE**

It is violative of the rights guaranteed by the Constitution of the United States of America and the Constitution of the State of Alabama to impose punitive damages against SN which are penal in nature by requiring a burden of proof on Plaintiffs which is less than the “beyond a reasonable doubt” burden required in criminal cases.

#### **THIRTIETH AFFIRMATIVE DEFENSE**

Any award of punitive damages to the Plaintiff in this case, on its face and/or as applied in this case, is in violation of the right to trial by jury of the Seventh Amendment of the Constitution of the United States.

#### **THIRTY-FIRST AFFIRMATIVE DEFENSE**

Any award of punitive damages to the Plaintiff in this case will be violative of the Eighth Amendment of the Constitution of the United States in that said damages would be an excessive fine in violation of the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.



### **THIRTY-SECOND AFFIRMATIVE DEFENSE**

Any award of punitive damages to the Plaintiff in this case will be violative of the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

### **THIRTY-THIRD AFFIRMATIVE DEFENSE**

The imposition of punitive damages in this cause violates the Due Process Clause of Amendments V and XIV to the United States Constitution and Article I, Sections 1, 2, 6, 11, 13, 15, 27 and 35 of the Alabama Constitution of 1901 because the authorization for unlimited punitive damages awards have a substantial chilling effect on the exercise of the fundamental rights to ordered liberty and of access to the courts. Among other things, the present procedure and standards for imposing punitive damages are unconstitutionally vague and violate Due Process under the aforesaid state and federal constitutional provisions by (1) failing to provide sufficiently objective and specific standards by which juries may decide whether to award punitive damages and to determine the amount of punitive damages awards; (2) failing to provide sufficiently objective and specific standards by which juries may impose punitive damages based on the culpability of alleged tortfeasors; (3) failing to provide sufficient objective specific standards by which juries may award punitive damages against multiple defendants for different alleged acts of wrongdoing; (4) failing to provide sufficiently objective and specific standards by

which juries may award separate judgments against alleged joint tortfeasors; (5) by failing to provide a sufficiently clear, objective, and specific standard for appellate review of awards for punitive damages; and (6) by failing to provide a meaningful opportunity for challenging the excessiveness of such awards.

#### **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

The imposition of punitive damages in this case violates the Equal Protection Clause of Amendments V and XIV of the United States Constitution and deprives SN of the right to equal protection under the law as provided in Article I, Sections 1, 6, and 22 of the Alabama Constitution of 1901, because, among other reasons, criminal defendants are placed in a position of distinct advantage over civil defendants of comparable culpability due to the disparity in punitive treatment for similar conduct and because the absence of sufficiently specific and objective standards for the imposition of punitive damages fails to ensure equality of treatment between and among similarly situated civil defendants.

#### **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claim for punitive damages cannot be upheld based on all grounds that the United States Supreme Court in BMW v. Gore, 116 S.Ct. 1589 (1996), determined that the provisions of Alabama law governing the right to recover punitive damages or the determination of the amount of punitive damages violate a defendant's rights provided by the United States Constitution.

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claim for punitive damages cannot be upheld under BMW v. Gore, 116 S.Ct. 1589 (1996) to the extent it is not based on the least drastic remedy or lowest amount of punitive damages that could be expected to ensure that this Defendant will more fully comply with this state's laws in the future.

**THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to recover punitive damages pursuant to Ala. Code §6-11-20 and §6-11-30 (1975), and thereby any claim for such damages is barred.

**THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

Any award of punitive damages in this case is subject to those limitations established by the Alabama Legislature and set forth in §6-11-21, Code of Ala. (1975). The Alabama Supreme Court's action abolishing the legislatively-created cap on punitive damages was unconstitutional and is without effect. Under the Constitution of the United States and the State of Alabama, the Alabama Supreme Court cannot abolish the cap created by the Legislature on punitive damages through judicial fiat.

**THIRTY-NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claim for punitive damages against SN cannot be sustained because punitive damages may be awarded jointly and severally against some or all of the defendants for different acts of alleged wrongdoing without apportionment among them based on the respective enormity of their alleged misconduct and will,

therefore, violate SN's rights under the Equal Protection Clause and the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution and Article I §§1, 6, 13 and 22 of the Alabama Constitution, and will be improper under the common law and public policies of the State of Alabama and the United States of America.

#### **FORTIETH AFFIRMATIVE DEFENSE**

Plaintiff's claim for punitive damages is barred because an award of punitive damages under Alabama law will constitute an impermissible burden on interstate commerce in violation of the Commerce Clause of Article I §9 of the United States Constitution.

#### **FORTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiff's claim for punitive is barred to the extent that it seeks the admission into evidence of SN's net worth in determining whether punitive damages are to be awarded and/or in what amount they are to be awarded because punitive damages are a form of punishment that is grounded in a defendant's status rather than in specific misconduct, and thus has the effect of treating classes of citizens unequally in violation of the Equal Protection Clause of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, §§1, 6, 13 and 22 of the Alabama Constitution.

**FORTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims for punitive damages against SN cannot be upheld, because any award of punitive damages under Alabama law without bifurcating the trial of all punitive damages would violate SN's due process rights guaranteed by the United States Constitution and the Alabama Constitution.

**FORTY-THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims for punitive damages against SN cannot be upheld, because an award of punitive damages under Alabama law for the purpose of compensating Plaintiff for elements of damage not otherwise recognized by Alabama law would violate SN's due process rights guaranteed by the United States Constitution and by the due process provisions of the Alabama Constitution.

**FORTY-FOURTH AFFIRMATIVE DEFENSE**

The Alabama statute authorizing punitive damages, Ala. Code §6-1-20 (1993) is constitutionally vague as written, construed, and applied.

**FORTY-FIFTH AFFIRMATIVE DEFENSE**

SN pleads the applicability of the Alabama Legislature's amendment to Alabama Code §6-11-21 (1975) with effective date of June 7, 1999.

**FORTY-SIXTH AFFIRMATIVE DEFENSE**

SN avers that it did not receive fair notice that the conduct that is alleged in Plaintiff's Complaint might subject it to punishment.

**FORTY-SEVENTH AFFIRMATIVE DEFENSE**

SN avers that it did not receive fair notice of the severity of the penalty that might be imposed for the alleged conduct set out in Plaintiff's Complaint.

**FORTY-EIGHTH AFFIRMATIVE DEFENSE**

The claims for punitive damages against SN are barred for reasons that Plaintiffs cannot produce clear and convincing evidence sufficient to support or sustain the imposition of punitive damages against this Defendant.

**FORTY-NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claim for punitive damages cannot be upheld based on a violation of due process of law as set forth in State Farm Mutual Automobile Insurance Company v. Campbell, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed. 2d. 585 (2003). Assuming arguendo Plaintiff could produce evidence sufficient to support an award of punitive damages, any award in excess of three (3) times compensatory damages would be an unconstitutional violation of SN's right to due process of law as set forth in the Gore and State Farm cases, supra.

**FIFTIETH AFFIRMATIVE DEFENSE**

SN reserves the right to amend its Answer and Affirmative Defenses as discovery progresses.

/s/ Christopher A. Bottcher  
\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 23, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ ECF system, which will send notification of such filing to the following:

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